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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/522,832 03/10/2000 Katsuhisa Sawazaki PMS 257760 4821

909 7590 12/11/2001  
PILLSBURY WINTHROP LLP  
1600 TYSONS BOULEVARD  
MCLEAN, VA 22102

[REDACTED] EXAMINER

BAUMEISTER, BRADLEY W

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2815

DATE MAILED: 12/11/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. <b>09/522,832</b>	Applicant(s) <b>Sawazaki et al.</b>
	Examiner <b>Bradley Baumeister</b>	Art Unit <b>2815</b>
		

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED Nov 29, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**THE PERIOD FOR REPLY [check only a) or b)]**

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_ . Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search. (See NOTE below);
  - (b)  they raise the issue of new matter. (See NOTE below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

4.  Applicant's reply has overcome the following rejection(s):
 

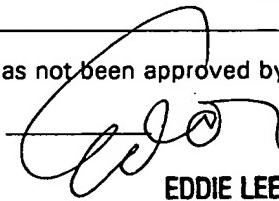
See attachment
5.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 

the arguments were not persuasive that the claims are not anticipated by Nakamnura. See attachment
7.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8.  For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
 

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1 and 4-6
9.  The proposed drawing correction filed on \_\_\_\_\_ a)  has b)  has not been approved by the Examiner.
10.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
11.  Other: See attached Response to Arguments

  
**EDDIE LEE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2800**

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## **DETAILED ACTION**

### *Response to Arguments*

1. Applicant's arguments filed 11/29/2001 have been fully considered but they are only partially persuasive.

a. Applicant's proposed amendment of claim 1 was limited to the correction of 112-2nd issues, simplifying prosecution and as such, will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with the requisite fees.

b. Applicants has asserted that the limitation of claim 1 setting forth that the barriers and clad are formed of materials that are "substantially the same" means that "the n-type clad layer and the barrier layer are composed of the same material, but may be differently doped" (REMARKS, page 3, paper #10). Accordingly, the claims are clarified by and limited to this definition (which is supported by, e.g., specification, page 7, lines 1-6), and the 112-2nd rejection is withdrawn.

c. Applicant's declaration filed 11/29/2001 has overcome the drawing objection and any rejections based on the embodiment of FIG 2 as being interpreted as prior art.

d. Regarding the rejection based on Kiyoku et al. '010, the examiner is persuaded that one skilled in the art would not interpret the disclosed light guide 215 to read on the clad of the present claim 1, so the rejection based thereon is withdrawn.

e. Regarding the rejection based on Nakamura et al. '307, Applicant has argued that Nakamura does not anticipate the present claims because that reference possesses a combination

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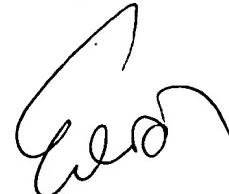
of 3 n-type clad layers while Applicant's invention only employs a single n-type clad layer. As an aside, it should be pointed out that while layer 202 of Nakamura is depicted as having a larger bandgap than the active layer, and as such can be deemed a clad, it's primary function is that of a light guide (see e.g., col. 10, line 54) and might be more appropriately referred to as such.

i. Regardless, Applicant's arguments relating to Nakamura are not persuasive because while the claim only sets forth a single n-type clad layer, the claims employ the open-ended transition word, "comprising." As such, the claim reads on any structure having *at least* the claimed elements. Since the first n-side layer 201 reads on the applicant's clad layer, the second n-side layer 202 reads on Applicant's intermediate layer, and all of the limitations are anticipated, it is immaterial whether Nakamura also depicts an additional n-type or clad layer 203. Accordingly, the rejection of the pending claims, 1 and 4-6, over Nakamura is maintained.

#### INFORMATION ON HOW TO CONTACT THE USPTO

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, **B. William Baumeister**, at (703) 306-9165. The examiner can normally be reached Monday through Friday, 8:30 a.m. to 5:00 p.m. If the Examiner is not available, the Examiner's supervisor, Mr. Eddie Lee, can be reached at (703) 308-1690. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

B. William Baumeister  
December 8, 2001



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SUPERVISORY PATENT EXAMINER  
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